Letter of Appeal Universal Service Administration Company October 23,2002 Page 8

violated if USAC were permitted to maintain that the instructions to FCC Form 499-Q constitute a rule of the FCC establishing a limitation period within which BDP may seek a refund of an overpayment to the fund.

Furthermore, USAC's reliance on the instruction to the worksheet for the year 2001 is as equally as arbitrary and capricious and an abuse of discretion as USAC's action in denying BDP's revised revenue reports for the years ending December 31, 1998, 1999 and 2000, because USAC fails to set forth the basis for such reliance. As BDP shows above, there is no statutory provision or FCC rule that specifies any limitation period for seeking refunds for overpayments to USAC; and USAC has no authority to establish a limitation period.

Secondly, the instructions applicable to the worksheets for the years 1998-2000, do not mandate that a contributor file a revised worksheet in any time period. In fact, the instructions to the telecommunications worksheet for these years only state that a contributor must file *the* revised worksheet if it discovers an error in the data that it reports. The instructions specify no time period for filing a revised report requesting a refund. Finally, while the instructions for completing the worksheet for the year 2001 refer to a revision deadline, these instructions are not binding on BDP, as stated above, because BDP had no notice that the deadline would be imposed or an opportunity to comment <u>before</u> the instructions were published.

Letter **of** Appeal Universal Service Administration Company October 23,2002 Page 9

### V. RELIEF REOUESTED

Accordingly, USAC's decision to reject BDP's refund requests are arbitrary and capricious, and must be overturned. **USAC** should accept BDP's revised 499 filings for the years 1998, 1999, 2000 and 2001, and refund BDP the amounts due for each of these years which totals \$1,016,738.43.

Respectfully submitted,

LOTTNER RUBIN FISHMAN BROWN & SAUL, P.C.

Michael L. Glaser

Michael D. Murphy

MLG/jrl Encs.

Filer 499 ID: 814329



## Universal Service Administrative Company

August 28.2002

Business Discort Plan, Inc. One World Trade Center Suite 800 Long Beach, CA 90831

Attn: Allison Bloom

**RE**: Form **457**Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 457 that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the period January 1—December 31, 1998. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.

USAC recognizes that you may disagree with our decision. If you wish to file an appeal, your appeal must be received no later than 60 days after the date of this letter.

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this **Revised** Form 457 Rejection letter and identify the outcome that you request;
- Mail your letter to:

Letter of Appeal USAC 2120 L Street, NW, Suite 600 Washington, DC 20037

- Appeals submitted hy fax, telephone call, and e-mail <u>will not</u> be processed.
- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who can most readily discuss this appeal with USAC.
- Identify the "Lega! Reporting Name" and "Filer 499 ID."

- **Explain** the appeal to **the** USAC. Please provide documentation to support your appeal.
- Attach a photocopy of this Revised Form 457 Rejection decision that you are appealing.

USAC will review all "letters of appeal" and respond in writing within 90 days of receipt thereof.

The response will indicate whether USAC:

- (1) agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 457 Rejection Letter; or
- (2) disagrees with your letter of appeal, and the reasons therefor.

If you disagree with the USAC response to your "letter of appeal," you may file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your "Letter of Appeal." The FCC address where you may direct your appeal is:

Federal Communications Commission Office of the Secretary 445 12th Street, SW Room TW-A325 Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC: "Docket Nos. 9645 and 97-21."

In the alternative, you may write and send an appeal letter directly to the Federal Communications Commission (FCC), and bypass USAC. Your letter of appeal to the FCC must explain why you disagree with the USAC decision. You are also encouraged to submit any documentation that supports your appeal. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 – 54.725) are available on the FCC web site (www.fcc.gov).

If you have questions or concerns regarding this letter, please contact Lisa Tubbs at (973) 884-81 16 or Christy Doleshal (973) 560-4426.

Sincerely,

**USAC** 

09/18/2802 13:55 714-523-3975 GENE QUERRY & ASSOC FACE 00/11



### **Universal Service Administrative Company**

August 28,2002

Business Discount Plan, Inc. One World Trade Center Suite 800 Long Beach, CA 90831 Filer **499 ID: 814239** 

Attn: Gene Querry

RE: Form 499-A Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-A that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the period January 1 – December 31,1999. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.

USAC recognizes that you may disagree with our decision. If you wish to file an anneal, your appeal must be received no later than 60 days after the date of this letter.

In the event that you choose to appeal the decision, you should **follow** these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this Revised Form 499-A Rejection letter and identify the outcome that you request;
- Mail your letter to:

Letter of Appeal USAC 2 120 L Street, NW, Suite 600 Washington, DC 20037

- Appeals submitted by fax, telephone call, and e-mail will not be processed
- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who Can most readily discuss this appeal with USAC.
- Identify the "Legal Reporting Name" and "Filer 499 ID."

- Explain the appeal to the USAC. Please provide documentation to support your appeal.
- Attach a photocopy of this Revised Form 499-A Rejection decision that you are appealing.

USAC will review all "letters of appeal" and respond in writing within 90 days of receipt thereof.

The response will indicate whether USAC:

- (1) agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 499-A Rejection Letter; or
- (2) disagrees with your letter of appeal, and the reasons therefor.

If you disagree with the USAC response to your "letter of appeal," you may file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your "Letter of Appeal." The FCC address where you may direct your appeal is:

> Federal Communications Commission Office of the Secretary **445 12th Street.** SW Room TW-A325 Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC: "DocketNos. 96-45 and 97-21."

Io the alternative, you may write and send an appeal letter directly to the Federal Communications Commission (FCC), and bypass USAC. Your letter of appeal to the FCC must explain why you disagree with the USAC decision. You are also encouraged to submit any documentation that supports your appeal. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 – 54.725) are available on the FCC web site (www.fcc.gov).

If you have questions or concerns regarding this letter, please contact Lisa Tubbs at (973) 884-8116 or Christy Doleshal at (973) 560-4426.

Sincerely,



714-523-3975

# **Universal Service Administrative Company**

Filer499 ID: 814239

August 28,2002

Business Discount Plan, Inc. **One** World Trade Center Suite 800 Long Beach, CA 90831

Attn: Genc Querry

RE Form 499-A Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-A that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for *the* period January **I**-December 31,2000. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.

USAC recognizes that you may disagree with our decision. If you wish to file an appeal, your appeal must be received no later than 60 days after the date of this letter.

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to **USAC"** explaining why you disagree with this Revised **Form 499-A** Rejection letter **and** identify **the** outcome that you request:
- Mail your letter to:

Letter of Appeal USAC **2120** L Street, NW, Suite 600 Washington, DC 20037

- Appeals submitted by fax, telephone call, and e-mail will <u>not</u> be processed
- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who can most readily discuss this appeal with USAC.
- Identify the "Legal Reporting Name" and Tiler 499 ID."

- Explain the appeal *to* the **USAC.** Please provide documentation to support your appeal.
- Attach a photocopy of this Revised Form **499-A** Rejection decision that **you** are appealing.

USAC will review all "letters of appeal" and respond in writing within 90 days of receipt thereof.

The response will indicate whether USAC:

- (1) agrees with your letter of appeal, and approves **an** outcome **that** is different **from** the Revised **Form 499-A** Rejection Letter; or
- (2) disagrees with your letter of appeal, and the reasons therefor.

If you disagree with the USAC response to your "letter of appeal," you may file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your "Letter of Appeal." The FCC address where you may direct your appeal is:

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Roam TW-A325
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC: "Docket Nos. 96-45 and 97-21."

In the alternative, you may write and send an appeal Letter directly to the Federal Communications Commission (FCC), and bypass USAC. Your letter of appeal to the FCC must explain why you disagree with the USAC decision. You are also encouraged to submit any documentation that supports your appeal. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 – 54.725) are available on the FCC web site (www.fcc.gov).

If you have questions or concerns regarding this letter, please contact Lisa Tubbs at (973) 884-81 16 or Christy Doleshal at (973) 560-4426.

Sincerely.

**USAC** 

09/10/2002 13:55 714-523-3975 GENE QUERRY & ASSOC PAGE



## **Universal Service Administrative Company**

August 28,2002

Business Discount Plan. Inc. One World Trade Center Suite 800 Long Beach, CA 90831

Filer499 **D:**814329

04/11

Atm: Allison Bloom

RE:

5/1 1/01, 11/01/01, **02/01/02** Form **499-Q** Revision Rejections

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-O that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the periods of January 1 – March 31, July 1 - September 30,2001 and October 1 - December 31,2001. Please note that your April 1,2002 Form 499-A submission reporting January 1 though December 31,2001 revenue will true-up your company's May 11,2001, August 1,2001. November 1,2001 and February 1,2002 quarterly Form 499-Q reports. However, based on the information provided, we are unable to accept the Form 499-Q revision because it was not filed prior to the revision deadlines. Per FCC Form 499-Q instructions on page 8, "revised filings must be made by the filing date for the subsequent 499 filing."

USAC recognizes that you may disagree with our decision. If you wish to file an appeal, your appeal must be received no later than 60 days after the date of this <u>letter</u>

In the event that you choose to appeal the decision. **you** should **fallow** these guidelines:

- Write a "Letter of Appeal to CSAC" explaining why you disagree with this Revised Form 499-Q Rejection letter and identify the outcome that you request;
- Mail your letter to:

Letter of Appeal **USAC** 2120 L Street, NW. Suite 600 Washington, DC 20037

Appeals submitted by fax, telephone call, and e-mail will not be processed

- Provide necessary contact *information*. Please list the name, address, telephone number, fax **number**, and e-mail address (if available) **of** the person who **can most** readily discuss this appeal with **USAC**.
- Identify the "Legal Reporting Name" and "Filer 499 ID."
- Explain the appeal to the USAC. Please provide documentation to support your appeal.
- Attach a photocopy of this Revised Form 499-Q Rejection decision that you are appealing.

USAC will review all "letters of appeal" and respond in Writing within 90 days of receipt thereof.

The response will indicate whether **USAC**:

- (1) agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 499-Q Rejection *Letter*; or
- (2) disagrees with your letter of appeal, and the reasons therefor.

If you disagree with the USAC response to your "letter of appeal," you may file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your "Letter of Appeal." The FCC address where you may direct your appeal is:

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC: "Docket Nos. 96-45 and 97-21."

In the alternative, you may write and send an appeal letter directly to the Federal Communications Commission (FCC), and bypass USAC. Your letter of appeal to the FCC must explain why you disagree with the USAC decision. You are also encouraged to submit any documentation that supports your appeal. The FCC rules governing the appeals process (part 54 of Title 47 of the Code of Federal Regulations 54.719-54.725) are available on the FCC web site (www.fcc.gov).

If you have questions or concerns regarding this letter, please contact Lisa Tubbs at (973) 884-8116 or Christy Doleshal at (973) 560-4428.

Sincerely,

**USAC** 

09/10/2002 13:55 714-523-3975



## **Universal Service Administrative Company**

Christy Doleshai Associate Manager-Revenue Administration

Filer499 ID: 814329

August 28,2002

Business Discount Plan, Inc. One World Trade Center Suite 800 Long Beach, CA 90831

Attn: Allison Bloom

RE: September 1,1999FCC Form 499-S Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-S that you submitted for the purpose of revising revenue reported by Business Discount Plan, Inc. for the period January 1 – June 30,1999. Based on the information provided, we are unable to accept the revision because it was not filed by January 31,2000.

The April 1,2000 FCC Form 499-A which reported January 1 - December 31,1999 revenue will true up any errors that were made on the 499-S filing. Therefore, there is no need to submit a revised 499-S filing.

Please feel free to contact the Form 499 Help Line at 973-560-4460 cr via e-mail at Form499@,necn.orgwith any questions.

Thank you,

89/18/2682 13:55 714-523-3975 GENE QUERRY & ASSUG FACE U....



### **Universal Service Administrative Company**

Christy Doleshal Associate Manager-Revenue Administration

Filer 499 ID: 814329

August 28,2002

Business Discount Plan, Inc. One World Trade Center Suite 800 Long Beach, CA 90831

Attn: Allison Bloom

RE: September 1,2000 FCC Form 499-S Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-S that you submitted for **the** purpose of revising revenue reported by Business Discount Plan, Inc. for the period **January 1 – June 30**,2000. **Based** on the information **provided**. we are unable to accept the revision because it **was** not filed by **January 31**, 2001.

The April 1,2001 FCC Form 499-A which reported January 1 - December 31,2000 revenue will **true** up **any** errors that were made on the 499-S **filing**. Therefore, there is no need to submit a revised 499-S tiling.

Please feel free to contact the Form 499 Help Line at 973-560-4460 or via e-mail at Form 499@neca.org with any questions.

Thank you,

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## **Universal Service Administrative Company**

#### Administrator's Decision on Contributor Appeal

STK DENVER RECEIVED JAN 0 3 2003

December 31, 2002

#### BY FEDERAL EXPRESS

Michael L. Glaser Shughard Thomson & Kilroy, P.C 105017<sup>th</sup> Street, Suite 2300 Denver, CO 80265

Re: Business Discount Plan, Inc. (ID# 814329)

Dear Mr. Glaser:

After thorough review, the Universal Service Administrative Company (USAC) has completed its evaluation of the letter of appeal submitted on behalf of Business Discount Plan, Inc. (BDP) dated October 23, 2002 (Appeal). BDP's Appeal requests that USAC accept BDP's late-tiled FCC Forms 457,499-S, 499-A and 499-Q reporting telecommunications revenue for the periods January I- December 31, 1998, January 1 – June 30, 1999, January 1 – June 30,2000, January 1 – December 31, 1999, January 1 – December 31, 2000, January 1 – March, 31, July 1 – September 30, 2001, and October I – December 31, 2001 (collectively referred to as FCC Worksheets), respectively.

#### Background:

BDP has requested that USAC accept late-filed FCC Worksheets reporting revenue periods for which the one year deadline for revised submissions has passed. BDP asserts that the revenue reported on the original FCC Worksheets was incorrectly provided by its billing aggregator. Further, BDP asserts that there is no deadline for filing established by FCC regulations and that USAC cannot lawfully rely on a deadline posted in instructions that accompany the FCC Worksheets

Michael L. Glaser Business Discount Plan, Inc December 31, 2002 Page 2

#### Discussion:

The FCC Worksheets and accompanying instructions which BDP attempted to revise were reviewed and approved by the FCC. FCC regulations in force during the relevant time period required carriers to file FCC Worksheets (FCC Form 499 or, previously, FCC Form 457) and required USAC to bill contributors based on reported revenues. *See generally* 37 C.F.R. Part 54. FCC regulations do not require USAC to accept any late-filed revised FCC Worksheets. However, in order to improve the accuracy of *the* revenue reported, the USAC Board of Directors has authorized staff to allow carriers to file new or revised worksheets after the original due date. Since September 1, 1999, USAC has allowed carriers to file new or revised FCC Worksheets after the original due date and for a period limited up to 12 months from the initial due date of the worksheet in question.

Because BDP's revised FCC Worksheets identified on the chart below were submitted after the original due date and beyond USAC's one year deadline for filing of revisions, they were rejected.

FCC Form	Due Date	Date Revisions Submitted
FCC Form 457	March 31, 1999	August 12, 2002
FCC Form 499-S	September I, 1999	August 12, 2002
FCC Form 499-S	September 1, 2000	August 12, 2002
FCC Form 499-A	April 1, 2000	August 12, 2002
FCC Form 499-A	April 1, 2001	August 12, 2002
FCC Form 499-Q	May 11, 2001	August 12, 2002
FCC Form 499-Q	November 1, 2001	August 12, 2002
FCC Form 499-Q	February 1, 2002	August 12, 2000

USAC properly rejected all forms submitted by BDP as untimely. However, BDP had the opportunity to correct the revenue data contained in the three most recent FCC Forms 499-Q set forth above at the time BDP filed its FCC Form 499-A covering 2001 annual revenue. BDP in fact, submitted revenue data on its FCC Form 499-A reporting 2001 annual revenue, which was timely filed on April 26, 2002. As provided in the FCC's *Quarterly Reporting Order*,' annual revenue information from the Form 499-A will be used to ensure that contributions for the entire year *are* based on all subject revenues for the year. Therefore, the FCC Form 499-A submitted by BDP on April 26,2002 properly revised the revenue reported on BDP's Forms 499-Q reporting 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> quarter 2001 revenue as set forth in the chart above.

Decision on Appeal: Denied in part; Dismissed as Moot in part

USAC hereby denies in part and dismisses as moot in part BDP's Appeal.

<sup>&</sup>lt;sup>1</sup> See Federal-Sinre Joint Board on Universal Service, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (rel. Mar. 14, 2001) (Quarterly Reporting Order).

Michael L. Glaser Business Discount Plan, Inc December 31,2002 Page 3

If you disagree with the USAC response to your Letter of Appeal, you may file **an** appeal with the Federal Communications Commission (FCC) within 60 days of the date of this letter. The FCC address where you may direct your appeal is:

Federal Communications Commission Office of the Secretary 445 12<sup>th</sup> Street, SW Room TW-A325 Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC: "Docket Nos. 96-45 and 97-21."

Sincerely,

USAC

Universal Service Administrative Company

cc: Anita Cheng, FCC Common Carrier Bureau James Shook, FCC Enforcement Bureau